

CHAPTERS 29 to 36

Reserved

CHAPTER 37

IOWA STATE INDUSTRIES

[Prior to 10/1/83, Social Services[770] Ch 23]
[Prior to 3/20/91, Corrections Department[291]]

201—37.1(904) Sale of products.

37.1(1) Iowa state industries shall sell products to any tax-supported institution or governmental subdivision in any level of government which includes state, county, city or school. Iowa state industries may sell products to employees of such entities.

37.1(2) Iowa state industries may sell products to nonprofit organizations such as parochial schools, churches, or fraternal organizations and employees of such nonprofit organizations.

37.1(3) Iowa state industries may sell products to nonprofit health care facilities serving Medicaid or social security patients.

37.1(4) Sales will not generally be solicited from the general public. However, the division director may determine with the advice of the prison industries advisory board that limited public sales will be made when the sales to political subdivisions are insufficient to justify continued operation of a shop.

This rule is intended to implement Iowa Code section 904.815.

201—37.2(904) Catalogues. Catalogues are available at the Sales Office, Division of Correctional Institutions, Department of Social Services, Lucas State Office Building, Des Moines, Iowa or the Industries Office located at the Iowa State Men's Reformatory, Anamosa, Iowa and the Iowa State Penitentiary, Fort Madison, Iowa.

201—37.3(904) Direct purchasing. This rule is to implement Iowa Code section 904.813, which provides in part for direct purchases from vendors of raw materials and capital items used for the manufacturing process of Iowa state industries.

37.3(1) Definitions.

"Competition" is the effect of three or more parties actually engaged independently to obtain a contract with industries to provide capital items or raw materials in the most advantageous conditions or terms. *"Advantageous conditions"* shall include but not be limited to price, qualitative and quantitative vendor performance, timely execution of contract, meeting specifications, and delivery of items per contract provisions.

"Department" means Iowa department of corrections.

"Director" means director of the division of Iowa state industries, Anamosa, Iowa.

"Industries" means the division of Iowa state industries, Des Moines, Iowa.

"Manager" means the business manager of Iowa state industries, Anamosa, Iowa.

37.3(2) Methods of procurement.

a. "Advertising" means purchasing by competitive bids to include the following procedures:

1. Developing specifications and proposals outlining the requirements of industries.
2. Appropriate publication in ample time to permit bidders to prepare and submit bids before the exact set time of public opening of said bids.

3. Subject to bid evaluation awarding a contract to the bidder meeting specifications that are in the most advantageous conditions to industries.

b. "Solicitation" means procurement by obtaining two or more quotations via writing, telegraphic, telephonic, or any other means industries deem acceptable and documentable.

c. "Negotiation" means a method of procurement other than advertising and solicitation.

d. Other. The department or industries reserve the right to include in their procurement other methods including, but not limited to, life-cycle costing, point systems, or present value formulas. Under these circumstances, industries shall explicitly note in their bid proposal(s) such methods to be used to assure all bidders of same.

37.3(3) Procurement policy. It shall be the policy of the department to procure capital items and raw materials in the most efficient and economical manner possible and in a competitive manner of interest to all parties.

a. Advertising. The advertising method of procurement shall be used whenever this method is feasible and practicable under existing circumstances and conditions and the amount of purchase exceeds \$10,000.

b. Solicitation. This method of procurement may be used if advertising is not practical in essence of time or advantageous to costs and the amount of purchase is less than \$10,000.

c. Negotiation. This method may be used if advertising or solicitation is not practicable or in any of the following circumstances:

- (1) Procurement is determined to be necessary in the public interest due to disaster or emergency.
- (2) Amount of purchase is limited and less than \$1,000.
- (3) Items to be purchased are sole source.
- (4) Competition is precluded because of patent rights, copyrights, confidential processes, etc.
- (5) Bids or quotations have been solicited, and no responsive or acceptable bids or quotations have been received.
- (6) Bids or quotations received do not cover quantity requirements or meet other specifications.
- (7) The procurement is for a part or component as a replacement of existing equipment specially designed by the manufacturer.

d. Advertising procedures:

- (1) The industries manager shall maintain current bidders' lists.
- (2) Bidders' lists shall be obtained from various sources to include, but not limited to, technical publications, telephone books, trade journals, vendors' registers, and targeted small businesses certified by the department of economic development and other state departments.
- (3) Any firm legally doing business in Iowa may be placed on the bid list by a written request to: Industries Manager, Iowa State Industries, Anamosa, Iowa 52205.
- (4) Subject to concurrence of the attorney general's office, a bidder's name may be refused or taken off the bidders' lists for any of the following reasons:
 1. Bidder has attempted to improperly influence any state employee involved in procurement processes.
 2. Reasonable grounds of collusion exist.
 3. Determination by the civil rights commission that the bidder conducts discriminatory practices.
 4. Bidder has failed to meet specifications and performance of a previous contract.

e. Proposals. Industries shall prepare request for proposals complete with bidding documents, specifications, and instructions to bidders.

(1) Subject to special circumstances, e.g., the purchase of new products or equipment, the request proposal may be marked "preliminary" requesting bidder(s) to review the proposal to determine their ability to bid or suggestions bidders may have.

(2) Written requests for variations, delivery times, or approved equal substitutions to the proposal shall be accepted, evaluated, and answered by industries.

(3) Proposals may be amended by industries to incorporate approved changes. All changes shall be sent to prospective bidders.

(4) Methods to be used by industries in evaluating bids shall be disclosed in the request for proposals or before bid opening.

(5) Proposals shall be sent to a sufficient number of prospective bidders to promote competition whenever possible.

(6) Industries shall publicize the procurement by advertising in appropriate publications to include date and time of bid opening, general description of term(s) to be purchased, and name and address of the person to contact to obtain a copy of the bidding proposal.

(7) Minority and small business enterprises shall be encouraged to participate in bidding.

f. Instructions to bidders. Each bidder shall prepare bidding documents in the manner prescribed.

(1) Bid preparation: Bids shall be signed in ink or typewritten on bidding documents prescribed. Telegraphic or telephonic bids are not acceptable.

(2) If applicable, the bidder shall designate brand, manufacturer's name, model number and other information to assist in identifying each item.

(3) Where requested, the unit and total price of each item and total of all items shall be provided on the bidding document. Alternate prices may be submitted by attaching an addendum to the bidding documents. In case of error, the unit price shall prevail.

(4) Bidders shall not quote discount price. No discounts shall be considered in making awards.

(5) No escalator clauses shall be considered unless specifically noted in the bid proposal by industries.

(6) Industries are exempt from payment of federal and state taxes. These taxes should not be included in the bid. An exemption certificate shall be furnished upon request.

(7) The bidder shall show the earliest date which delivery can be made. Delivery dates may be used in awarding bids.

(8) No ties or reservations are permitted. These stipulations are grounds for rejection of bid(s).

(9) All bids shall be submitted in sufficient time set by industries prior to the opening of bids. Bids received shall be dated by industries indicating date and hour received.

(10) All bidders agree the contents of the bid proposal and related specifications shall become a part of the contract if bidder receives the award.

(11) A proposal guaranty may be required as security that the bidders will execute the contract if awarded to the bidder. When required, each bid shall be supported by a guaranty in the form prescribed. Bids not so supported shall not be accepted.

(12) Bids may be modified or withdrawn prior to the time set for opening of bids. No bid may be withdrawn or modified after opening.

(13) Bids shall be opened publicly and read aloud at the time stipulated in the proposal.

(14) Bid tabulations shall be sent to all bidders prior to contract award.

(15) Industries reserve the right to accept or reject any or all bids. Likewise, bids may be rejected for any of the following reasons:

1. Evidence of unfair bidding practices.
 2. Financial insolvency of bidder.
 3. Noncompliance of proposal, specifications, or requirements of these rules.
- g. Contract provisions.*

(1) Unless otherwise specified by industries in the proposal, an award shall be within 30 days after bid opening. If an award is not made within the applicable time frame, the procurement shall be canceled unless an extension of time is mutually agreed by industries and apparent successful bidder.

(2) Tie bids which are equal in all aspects shall be resolved as follows:

1. In event one of the tied bidders had a contract the previous year for the same item and same location and the contract was performed satisfactorily, the prior contract shall receive the award.

2. If the tie involves both Iowa and out-of-state bidders, the contract shall be awarded to the Iowa bidder. In case a tie involves Iowa bidders, the award shall be determined by lot.

3. In the event no Iowa bidders are involved in tie bids, award shall be determined by lot.
4. In the event awards are determined by lot, bidders may be present or appoint a representative to witness the award by lot.
5. All proposal guaranties of unsuccessful bidders shall be returned by industries after award is made. The proposal guaranty of the successful bidder shall be returned following execution of contract. However, in the event a successful bidder fails to execute a contract within 15 days after award, the award may be annulled and guaranty forfeited to industries.
 - (3) The successful bidder shall enter into a formal contract with industries within 15 days after award.
 - (4) A performance bond or certificate of liability or both, and property damage insurance may be required. In the event a bond or insurance is required, the bond or insurance shall be filed with industries within 15 days after award. Failure to file these documents will be cause for cancellation of contract and retention of the proposal guaranty by industries.
 - (5) A contractor may not assign a contract to another party without written approval from industries.
 - (6) In the event a contractor's business or source of supply has been disrupted by a strike, lockout, or act of God, the contractor shall notify industries which may elect to cancel the contract without penalty.
 - (7) Unless otherwise stipulated in the contract, progress and final payment shall be made promptly upon acceptance and completion of the items provided and receipt of an original invoice.
 - (8) Industries may provide for a liquidated damage clause in their contract(s) for failure to complete a contract within the specified contract period.
 - (9) Subject to time frame, administrative costs, market projections of available source, and cost of raw materials, industries may extend contracts subject to approval of the existing contractor.
 - (10) Protest of recommended contract shall be in writing to the industries manager at least three days prior to contract award.
 - (11) Requests for further interpretation or clarification of Iowa state industries policies or administrative rules should be directed to the Director, Iowa State Industries, Des Moines, Iowa 50319.
 - (12) Information regarding the administration of these rules should be directed to the Manager, Iowa Prison Industries, Anamosa, Iowa 52205.

37.3(4) *Appeal process.* Vendors may appeal actions by Iowa state industries under these rules as follows:

- a. Appeals shall be filed in writing to the industries manager within five working days of notification of the action being appealed.
- b. If the appeal is not resolved, it may be further appealed to the Director of Iowa State Industries, Des Moines, Iowa 50319.
- c. An unresolved appeal shall be referred to the Director of the Department of Corrections, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 904.813.

201—37.4(904) Prison industries advisory board.

37.4(1) *Rules of procedure.* The seven-member industries board is represented by five appointees of the governor, one appointee of the parole board, and one appointee of the director, division of adult corrections. Its principal duties are to promulgate and adopt rules and to advise the director, division of adult corrections, regarding the management of Iowa state industries.

- a. A quorum shall consist of five members.
- b. Where a quorum is present, a position is carried by a majority of the members of the board.
- c. Copies of the minutes are kept on file in the office of the director, division of adult corrections, department of social services. Minutes are available from the director's office to interested persons upon request. Organizations may request to be placed on a mailing list.

d. The board will meet at least once per calendar quarter. The meetings will be held at the seat of government unless notification is given otherwise. Other meetings shall be held at the call of the chairperson or of any three members when necessary for the board to discharge its duties.

(1) The communications media shall be notified at least two weeks in advance of such meetings.

(2) When it is necessary to hold an emergency meeting, the communications media shall be notified as far in advance of the meeting as time allows. The nature of the emergency shall be stated in the minutes.

e. In cases not covered by these rules, Robert's Rules of Order shall govern.

37.4(2) Meetings. All meetings will be open to the public unless specifically allowed to be closed under Iowa Code chapter 21.

a. Persons wishing to make a presentation shall make such request to the director, division of adult corrections, department of social services, or to any member of the board at least one week in advance of the scheduled meeting.

b. Persons making a presentation are requested to submit one written copy of their remarks for the record.

c. Persons who have not made previous arrangements to speak at a meeting may be given the floor at the discretion of the chairperson.

This rule is intended to implement Iowa Code section 904.803.

201—37.5(904) Private sector employment projects.

37.5(1) Definitions.

"Advisory board" means the prison industries advisory board.

"Deputy director of prison industries" means the department of corrections deputy director responsible for the day-to-day operations of prison industries including private sector individuals.

"Director" means the chief executive officer of the department of corrections.

"Workforce development board" means the state workforce development board.

"Workforce development director" means the chief executive officer of the department of workforce development.

37.5(2) Preapplication requirement. Prior to submitting an application to the deputy director of prison industries for a private sector employment project, the employer shall place a job order with a duration of at least 30 days with the nearest workforce development center. The job order will contain the prevailing wage determined by workforce development. The job order shall be listed statewide in all centers and on the department of workforce development's jobs Internet site.

37.5(3) Employer application.

a. Private sector employers requesting offender labor must submit the following to the deputy director of prison industries:

1. Work program, including job description;
2. Proposed wage rate;
3. Description of job site;
4. Duration of the work; and
5. Copy of the job order listing with workforce development.

b. Upon receiving a written proposal to use offenders in a private sector work program, the deputy director of prison industries shall provide a copy of the private sector work proposal including job descriptions and proposed wages to the workforce development director.

c. The deputy director of prison industries shall send a letter to the department of workforce development requesting verification of the employer's 30-day job listing, the average wage rate for the job(s) the offenders will perform, the current unemployment rate in the county where the employer is located, and the current employment level of the company that will employ the offenders.

d. The deputy director of prison industries and the warden/superintendent at the proposed institution shall review the proposed projects with the board of supervisors and the sheriff in the county where the project will be located.

37.5(4) Verification. The workforce development director shall verify the employment levels and prevailing wages paid for similar jobs in the area and provide to the deputy director of prison industries in writing:

1. Verification of the employer's 30-day job listing;
2. The number of qualified applicant referrals and hires made as a result of the job order;
3. The average wage rate for the proposed job(s);
4. The wage range;
5. The current unemployment rate for the county where the employer is located; and
6. The current employment levels of the company that will employ the offenders based upon the most recent quarter for which data is available.

37.5(5) Prevailing wages. The deputy director of prison industries shall obtain employment levels in the locale of the proposed job(s) and the prevailing wages for the job(s) in question from the department of workforce development prior to authorizing any private sector work program. The deputy director of prison industries will consider the average wage rate and wage range from the department of workforce development for the appropriate geographic area for which occupational wage information is available. The appropriate geographic area may be statewide.

To reduce possible displacement of civilian workers, the deputy director of prison industries shall advise prospective employers and eligible offenders of the following requirements:

1. Offenders shall not be eligible for unemployment compensation while incarcerated.
2. Before the employer initiates work utilizing offender labor, the deputy director of prison industries shall provide the baseline number of jobs as established by the department of workforce development.
3. In January and July of each year, the deputy director of prison industries shall receive from the department of workforce development the actual number of civilian workers by employer and shall compile a side-by-side comparison for each employer. A copy of the side-by-side comparison will be provided to the advisory board and workforce development director semiannually.

37.5(6) Ineligible projects. The deputy director of prison industries shall evaluate the information from the department of workforce development to verify nondisplacement of civilian workers. Employment of offenders in private industry shall not displace employed workers, apply to skills, crafts, or trades in which there is a local surplus of labor, or impair existing contracts for employment or services.

37.5(7) Notification. The deputy director of prison industries shall provide a copy of the private sector work proposal and the department of workforce development review of the private sector work proposal to the following:

1. Governor's office;
2. Speaker of the house;
3. President of the senate;
4. Warden/superintendent at the proposed work site;
5. Local labor organization(s);
6. Director of workforce development; and
7. Department of Justice, Washington, DC.

Within 14 calendar days of receiving the department of workforce development review, the deputy director of prison industries will consolidate the recommendations for review and approval by the director of corrections.

37.5(8) *Prison industries advisory board review.* Following approval by the director of corrections, the deputy director of prison industries shall forward the final proposal to the prison industries advisory board with the recommendation to approve or disapprove the work program, including all correspondence from the department of workforce development, the Department of Justice, and any local official who has offered comments.

The deputy director of prison industries shall provide written documentation to the prison industries advisory board confirming that the proposed work project will not displace civilian workers. If displacement occurs, the deputy director of prison industries shall advise the private employer that the employer will be given 30 days to become compliant or the department of corrections will terminate the use of offender labor.

37.5(9) *Disputes.* Anyone who believes that the private sector work program violates this rule shall advise the department of workforce development. A written complaint may be filed in accordance with workforce development board rule 877—1.5(84A). The workforce development director shall consult with the deputy director of prison industries before the workforce development board makes a final recommendation(s) to resolve any complaint.

The deputy director of prison industries will assist the department of workforce development in compiling all information necessary to resolve the dispute. The workforce development board shall notify the deputy director of prison industries and interested parties in writing of the recommended action to resolve a complaint, which will be binding on all parties.

This rule is intended to implement Iowa Code section 904.809.

201—37.6(904) Utilization of offender labor in construction and maintenance projects.

37.6(1) *Definitions.*

“*Director*” means the chief executive officer of the department of corrections.

“*Employer*” means a contractor or subcontractor providing maintenance or construction services under contract to the department of corrections or under the department of general services.

“*Workforce development director*” means the chief executive officer of the department of workforce development.

37.6(2) *Scope.* Utilization of offender labor applies only to contractors or subcontractors providing construction or maintenance services to the department of corrections. The contract authority for providing construction or maintenance services may be the department of general services.

37.6(3) *Employer application.* Employers working under contract with the state of Iowa may submit an application to the department of corrections to employ offenders. Requests for such labor shall not include work release offenders assigned to community-based corrections under Iowa Code chapter 905.

a. Prior to submitting an application, the employer shall place with the nearest workforce development center a job order with a duration of at least 30 days. The job order will contain the prevailing wage determined by the department of workforce development. The job order shall be listed statewide in all centers and on the department of workforce development’s jobs Internet site.

b. The employer’s application shall include:

1. Scope of work, including type of work and required number of workers;
2. Proposed wage rate;
3. Location;
4. Duration; and
5. Reason for utilizing offender labor.

c. The department of corrections shall verify through the department of workforce development the employer’s 30-day job listing, the average wage rate for the job(s) the offenders will perform, the current unemployment rate in the county where the employer is located, and the current employment level of the employer that will employ the offenders.

37.6(4) Verification. The director of workforce development shall verify the employment levels and prevailing wages paid for similar jobs in the area and provide to the director, in writing:

1. Verification of the employer's 30-day job listing;
2. The number of qualified applicant referrals and hires made as a result of the job order;
3. The average wage rate for the proposed job(s);
4. The wage range;
5. The prevailing wage as determined by the U.S. Department of Labor;
6. The current unemployment rate for the county where the employer is located;
7. The current employment levels of the employer that will employ the offenders based upon the

most recent quarter for which data is available.

37.6(5) Safety training. The employer shall document that all offenders employed in construction and maintenance projects receive a 10-hour OSHA safety course provided free of charge by the department of workforce development.

37.6(6) Prevailing wages. The director will not authorize an employer to employ offenders in hard labor programs without obtaining from the department of workforce development employment levels in the locale of the proposed jobs and the prevailing wages for the jobs in question. The average wage rate and wage range from the department of workforce development will be based on the appropriate geographic area for which occupational wage information is available. The appropriate geographic area may be statewide.

To reduce any potential displacement of civilian workers, the director shall advise prospective employers and eligible offenders of the following requirements:

1. Offenders will not be eligible for unemployment compensation while incarcerated.
2. Before the employer initiates work utilizing offender labor, the director shall provide the baseline number of jobs as established by the department of workforce development.
3. If the contract to employ offender labor exceeds six months, the director shall request and receive from the workforce development director the average wage rates and wage ranges for jobs currently held by offenders and current employment levels of employers employing offenders and shall compile a side-by-side comparison of each employer.

37.6(7) Disputes. Anyone who believes that the employer's application violates this rule shall present concerns in writing to the workforce development board. A written complaint may be filed with the workforce development board for any dispute arising from the implementation of the employer's application in accordance with the workforce development board's rule 877—1.6(84A). The workforce development board shall consult with the director prior to making recommendations. The director will assist the workforce development board in compiling all information necessary to resolve the dispute. The workforce development board shall notify the director and interested parties in writing of the corrective action plan to resolve the dispute, which will be binding on all parties.

This rule is intended to implement Iowa Code section 904.701.

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◇Two ARCs